DISCUSSION

BEFORE PRESENTING DETAIL IT IS FIRST NOTED THAT A STUDY OF EXAMINER CITED PATENTS TO ALLISON 6,546,230, AND DARAGO ET AL. 6,170,014, PROVIDES ABSOLUTELY NO GUIDANCE WHICH WOULD LEAD ONE SKILLED IN THE ART TO ARRIVE AT THE CLAIMS IN THE PRESENT APPLICATION. THE EXAMINER HAS SIMPLY IDENTIFIED LIMITATIONS IN THE PRESENT CLAIMS AND THEN LOOKED FOR SOMETHING SOMEHOW RELATED IN SAID REFERENCES, ALONG WITH ADDING ARM-WAVING TO PROVIDE ABSOLUTELY MISSING ELEMENTS. THIS IS DEMONSTRATIVE OF THE APPLICATION OF PROHIBITED HINDSIGHT. FURTHER, THE LAWCAST MATERIALS, WHICH AT LEAST DISCUSS DISTRIBUTION OF AUDIO FORMAT CURRENT EVENTS, DO NOT DESCRIBE DISTRIBUTION VIA THE INTERNET, AND IN FACT SAID LAWCAST MATERIALS ACTUALLY TEACH AWAY FROM USE OF THE INTERNET! SEE PAGE 2 THEREOF IN THE THIRD PARAGRAPH FROM THE BOTTOM WHERE IT STATES:

> "EVEN COMPUTERS - NO MATTER HOW GOOD THEY GET, YOU CAN'T USE THEM IN THE CAR", SAID MEYER, ..."YOU CAN'T USE THEM AS YOU WALK".

ONE SKILLED IN THE ART WOULD ABSOLUTELY NOT BE GUIDED THEREBY TO ARRIVE AT THE PRESENT CLAIMS WHICH RECITE:

> "allowing at least one client to receive said audio format professional continuing education information via said web site by, using an internet accessing means...", (note, computers comprise an internet accessing means).

LAW CAST TEACHES AWAY FROM USE OF COMPUTERS, HENCE, THE INTERNET.

NOTE ALSO THAT THE EXAMINER ADMITS ON PAGE 6 OF THE ACTION, IN

LINE 11, THAT DARAGO DOES NOT TEACH PROFESSIONAL CURRENCY...

Continuing, the Examiner has withdrawn the prior Rejection which was based on Allison 6,546,230, in view of Law Cast, because Allison does not allow definite access to courses in the absence of a deficiency determining test. While a "button" is present on a screen in Allison 230 which seems to allow direct access to courses, nothing in Allison indicates that prior to completing a test there would be any content therein at all. In the absence of the test the only possible content which might directly accessible would be what might be turned-up by an search engine, and such an arbitrary search engine produced list of courses would not serve the purpose of Allison 230. The utility of Allison 230 derives from its presentation of a focused list of courses based upon a specific identified deficiency. Therefore, Allsion teaches away from such simple providing access to an arbitrary listing.

The Examiner now cites Darago et al. 6,170,014, in view of Allison 230 or Law Cast. To begin, it is understood why Darago et al. 014 is the Examiner's second choice. A study of Darago et al. 014, (which is a very detailed rambling disertation that attempted to include even the proverbial "kitchen sink", but even in so doing, fails to disclose important features of the present invention), shows that it decribes computer architecture for managing courseware, including tending to billing and security and is concerned primarily with delivery as opposed to authoring of information, (see Col. 2, Lines 18-20). Darago et al. 014, however, suffers from the same deficiency as does Allison 130 in that it is not clear what a user of the system disclosed therein could directly access from a content server without first doing an equivalent to taking the Allison 230 test, (ie. to determine incompetence in an area by other means to enable identifying a

relevant course). The Darago et al. 014 Patent allows the presence of any number of, (no limit is indicated on how many Coursewares or topics might be in accessible content servers), of Coursewares, which can be focused on any topic at all, to be available via its system, and refers to the function performed as being "network-based training" (Col. 2, L. 34), involving "Courseware. "Courseware" is defined broadly as shown by: "Those skilled in the art will recognize that many of the comments above apply not solely to courseware, but also to other types of digital content, including without limitation musical recordings, visual images, and the like", (Col 5, L. 22-25), and Darago et al. 014 likens what is provided over the system thereof to what is provided by "traditional institutions of higher education" (Col. 3 beginning in L. 12), and in Col 3 Lines 36 - 38 examples are given as "...paintings, photographs, animations, musical works, instructional texts and other works"; but nowhere in the VERY detailed disclosure of Darago et al. 014 is "Courseware" described having a meaning as indicated by:

> periodically updating the content thereof a continuing multiplicity of times via said internet website, wherein the content of each update is primarily focused on developments since the preceeding update, rather than on overcoming identified deficiency or establishing basic education;

where the format is guaranteed to be audio, (not the case in Darago et al. 014 or Allison 230 in which any format is included and nothing therein suggests preference of audio). In view of the VERY detailed disclosure in Darago et al. 014, the absence of such a disclosure is a striking one. In that light Darago et al. 014 must be seen as teaching away from the present invention, by specifically directing attention only toward other things under the terminology "Courseware". Had Darago et al.

014 simply said "any information or format" and left it at that that would be one thing, but to be so detailed in so many examples without specifying the example relevant to the Present Invention leads one reading it away from the Present invention. Specifically, nothing in Daraqo et al. 014 would lead one to seek out the Lawcast materials. Nothing therein in identifies:

> periodically updated audio format professional continuing education information available from audio information format machine readable storage via said web site[[,]] in topical categories, and at least impliedly agreeing to provide a service of periodically updating the content thereof a continuing multiplicity of times, wherein the content of each update is primarily focused on developments since the preceeding update, rather than on overcoming identified deficiency or establishing basic education;...

AND NOTE---that the Daraqo et al. 014 system is disclosed as -being applicable- to handling a large number of types of information which is VERY DIFFERENT than it directing attention toward the just recited periodically updated information based on developments since a preceeding update even if such had been specifically mentioned therewithin, (which is was not). Daraqo et al. 014 provides lots of examples of information to which the system thereof can be applied under the term Courseware, but nothing in the very detailed disclosure of Daraqo et al. 014 would lead one skilled in the art on point in the Present Application to consider reoccuring updates focused on current events. Again, Darago et al. 014 does specifically identify many other types of information can be handled by its system, but does NOT describe or even suggest a substantially dedicated audio format Method which a user thereof knows will provide current updates in a limited number of definite known categories, said

methodology being the area of the Present Invention. Darago et al. 014 therefore teaches away from the present invention by not identifying the focus of the Presnet Invention while providing detail about other sorts of course materials. Further, the area of art to which Darago et al. 014 belongs primarily concerns apparatus and not methodology, therefore provides no guide to the Methodology Steps of the Present Invention as Claimed herein.

For additional insight, it is also noted that in Col. 6, Lines 54 - 55 of Darago et al. 014 that it is contemplated that a user could accidentally start a wrong course. Unless a user practiced steps to avoid this, (such as identifying a desired course as by an equivalent to the Allison 230 testing), any course accessed directly thereby would be much like simply randomly opening a hit out of thousand located by a search engine. In view of this it is not understood how Darago et al. 014, just as is the case in Allison 230, would provide any Utility to one so using it, therefore cannot be an element thereof or suggested thereby. Darago et al. 014 simply does not teach random access of Courseware. Darago et al. 014 would enable controlling access to protected information in, and billing for the access to a randomly accessed course, but this would be of no Utility to a user seeking specific information. One using the system of Darago et al. 014 would necessarily have to practice an equivalent to the Testing in Allison 230 for use of the Darago et al. 014 system to make any sense. Just as pointed out in opposition to the use of in Allison 230 in the previous rejection, a random accessing of the equivalent to a hit from a search engine by a user of the Darago et al. 014 system would be pure folly. And, in view of the fact that there is essentially no limit on what can be accessed using the Darago et al. 014 system, a user accessing a course therevia without first determining an area of deficiency, such as by the Allison testing

or a functional equivalent, (eg. employer requirement), would statistically overwhelmingly provide the user with random worthless information. Access would be well documented and invoiced for by the Darago et al. 014 system, but the content of what was accessed would almost always have no relevance to the user, unless something like the Allison 230 testing had first identified an area relevant to the use. And note, the Darago et al. 014 describes selecting and registering to receive Courseware etc. This indicates that Darago et al. 014 agrees with the foregoing observation.

Also, nothing in Darago et al. 014 remotely suggests that information accessed using the system thereof should be limited to current updates in a catagory selected from the relatively limited group consisting of:

law related areas of:

patent, trademark, copyright, trade secret, computer, internet, unfair competition, high-tech, contract, tort, property, wills & trusts, criminal, evidence, constitutional, corporate, taxation, estate planning, securities, banking, bankruptcy, accounting, trade regulation, commodities, insurance, energy, environment and water, aviation, automobile, labor, social security, family, divorce, juvenile, workman's compensation, personal injury, product liability, employment practices, administrative, educational, mass communications, medical, farm, and military;

science, medical and technology related areas of:

astronomy, architecture, mathematics/statistics, physics, chemistry, engineering (electrical/electronic, nuclear,

mechanical, civil, chemical, biological, genomic, construction, transportation, industrial, manufacturing, agricultural, computer, energy, environmental), hortoculture/forestry, geology, food science, nutrition, psychology, zoology, veterinary, medicine (anatomy, physiology, bio-chemistry, cardiology, renal, gastro-intestinal, pulmonary, pathology, microbiology), pharmacy, nursing, Scientology/Dianetics;

as do Presently Pending Claims 11, 12 and 19. In the context of the system of Darago et al. 014 which applies to any type of information content and focuses on controlling and protecting access thereto and enforcing billings for access etc., such a limitation would make no sense at all. Therefore that is not disclosed or remotely even suggested in Darago et al. 014 or Allison 230 for that matter. In that light Darago et al. 014 teaches away from the present invention limitation of categories of information which are covered by Claims 11, 12 and 19. Note specifically that Claim 19 herein includes this limitation.

Continuing, as one accessing a course from a Darago et al. 014 controlled system would be doing so to develop background in an area much like as in an institution of higher education, some process equivalent to the Allison 230 testing would by necessity have to be performed to identify a relevant course, (eg. an employer requires an employee to develop competency in an area), out of the many possible courses offered. Again, nothing in Darago et al. 014, or Allison 230, suggests that a users would just randomly access courses or that what should be provided to a user of the relevant system should be updates regarding current developments in a specific category in a limited number thereof. Nor does anything in either Allison 230 or Darango et al. 014 suggests that a user <u>MUST</u> access a category twice, with an update

of current developments by the provider having occured between accessings. The Examiner handles this point by an "arm waving" presumptive statement beginning at the bottom of Page 5 of his recent Action, whereat it states: "It would have been obvious to one skilled in the art (at the) time the invention was made to keep courseware current in order to sustain business operations". In addition to the general traverse of the Examiner's position herein, this position is specifically and strongly Traversed. Nothing like that is suggested in Darago et al. 014 and the Examiner does not show where a continuing series of updates, each being focused on current developments in a limited number of categories is contemplated or suggested in Darago et al. 014. The Examiner's response is truely "arm-waving". And, neither Allison 230 or Darago et al. 014 REQUIRE the information provider of courseware to undertake to provide a multiplicity of updates. The Claims are Amended herein to require in step b:

> b. said information provider making periodically updated audio format professional continuing education information available from audio information format machine readable storage via said web site[[,]] in topical categories, and at least impliedly agreeing to provide a service of periodically updating the content thereof a continuing multiplicity of times, wherein the content of each update is primarily focused on developments since the preceeding update, rather than on overcoming identified deficiency or establishing basic education;

With that added limitation in mind, the Examiner should consider that the Amended Claims in the Present Application REQUIRE that a user access a category twice, where an update has occured between acessing. That is there are at least TWO REQUIRED limitations in the Present Claims which MUST be practiced to be within their

scope. FIRST the information provider MUST at least impliedly agree to provide a service of periodically updating the content thereof an essentially open ended multiplicity of times, wherein the content of each update is focused on current developments rather than on overcoming identified deficiency or establishing basic education; AND SECOND the Client is REQUIRED to, via the Internet, access a category at least twice, where an update in information occured between accessings. Nothing in Alison 230 or Daraqo et al. 014 remotely suqqest said TWO limitations MUST be Practiced to be within the Pending Claims herein, nor does either reference suggest that information content in an acessed course should be focused on current developments rather than on overcoming identified deficiency or establishing basic education. In fact, the presentation in both Allison 230 and Darago et al. 014 leave the impression that the information, (Courseware), contemplated to be provided to a user thereof would be focused on overcoming identified deficiency (Allison 230) or providing basic education. Nothing in either specifically identifies

> a service of periodically updating the content thereof a continuing multiplicity of times via said internet website, wherein the content of each update is primarily focused on developments since the preceeding update rather than on overcoming identified deficiency or establishing basic education;

Again, while silent on the point, nothing in Allison 230 or Daraqo et al. 014, (which gives many other examples of what is means by Courseware), even gives a feel that what is meant by Courseware is defined as an open ended multiplicity of updates in specific categories, wherein the content of each update is focused on current developments, rather than on overcoming identified deficiency or establishing basic education. While

the Daraqo et al. 014 multilevel computer architecture can be applied to essentially any information within the teachings of Daraqo et al. 014, nothing in Daraqo et al. 014 fairly suqqests a method service of periodically updating the content thereof a continuing multiplicity of times via said internet website, wherein the content of each update is focused primarily on developments since the preceeding update rather than on overcoming identified deficiency or establishing basic education. And a lot in Darago et al. 014 suggests application to other sorts of specified information which it might be considered would lead one skilled in the art toward. There is no reason one skilled in the art would ignore what is actually stated in Darago et al. 014, and somehow have a flash of insight to apply the application teachings to Programming of a tyope which is not mentioned.

It is also noted that Claim 19, step f requires a THIRD Limitation, a reaccessing of previously accessed information a second time, is amended to read:

> f. said client, after step e, again accessing the audio format professional continuing education information originally provided in a practice of step d before the information is ~~being~~ updated and accessed in step e, by again practicing step d with the addition that the identifying date with which said updated audio format professional continuing education information was tagged is entered along with the identifying of a professional continuing education information topical category of interest;

The Examiner's arm waving position, that it would be obvious to update information to courseware current in order to sustain business operations, does NOT explain why one would then access

old information again as required in Claim 19. There would be no reason to access old courseware if new courseware replaced it! PLEASE CONSIDER THIS POINT CAREFULLY.

Again, Allison 230 and Darago et al. 014 are focused on providing Courses/Courseware that have as their purpose to overcome identified deficiencies or establishing basic knowledge, rather than on presentation of current periodically updated information. It would make sense to reaccess such old update information later, (eg. to locate a law case decided a few periods ago which a listener remembered hearing about), but it would make no sense at all to reacess an old course if a new version is available. If it made sense to do that then it made no sense to preapare the new version! The purpose of producing the new version of a course would be to improve over what was already produced but no longer as viable, therefore:

> providing access to an old course meant to overcome an identified deficiency or establish basic competence would not sustain business operations. That is what the produced new version would be for and do. Once a new version exists accessing an old version would make no sense based on the Examiner's stated reasoning.

IT IS BELIEVED THAT IN VIEW OF THE THIRD LIMITATION CLAIM 19 HEREIN IS THEREFORE VERY NON-OBVIOUS AS A RESULT. Do be very clear that Claim 1 herein provides a Method sequence of Method steps which are not remotely suggested by either Darago et al. 014 (or Allison 230) within the four corners thereof, and Claim 19 adds another Method step makes that even more true. One skilled in the art who reads Darago et al. 014 might be expected to find Allison 230, but even in combination those references do not describe the Sequence Of Steps in the Claims presented

herein. One having read Darago et al. 014 and Allison 230 simply would not automatically arrive at the Steps of the Present Invention Claims. One could, after reading Darago et al. 014 and Allison 230 envision any number of imaginative sequences of steps which are not suggested by Darago et al. 014 and Allison 230, and which would not be obviated thereby. The Present Invention Claims some such imaginative Method Sequence of Steps.

It is again mentioned that Claim 19 includes as a limitation a specific listing of categories of current updated information to which it applies. This is actually a FOURTH significant limitation. Darango et al. 014, as mentioned, places no limit on what categories might be handled by its "bookkeeping" apparatus.

Further, the Examiner notes that "Time Stamps" are known. Mention thereof is found Darago et al. 014, for instance, in Col. 18, Lines 40 - 46. However, knowing about the existence of Time Stamps is very different from the Method step application thereof in the Present Invention Claim 19. It is noted that the existence of an element of an invention in a vacuum, without instructions as how to apply it in other than the Present Specification, can not obviate use thereof in a New Invention Method. Method Claims often Claim New Uses for existing elements. And in the Darago et al. 014 case, an application of Time Stamps different from that in the Present Invention is described, hence it teaches away from the Present Invention useage thereof.

Continuing, in view of the Claims herein, it is pointed out that if a user of Allison 230 or Darago et al. 014 accesses a course over the internet which is prepared by an information provider that does NOT at least impliedly agree to provide a service of periodically updating the content thereof an

essentially open ended multiplicity of times, then said activity does not come within the scope of the Claims herein. Nothing in Darago et al. 014 suggests such a requirement. Even if an information provider does provide an update but not under an implied agreement to do so, or if the user does not access it, said activity does not come within the scope of the Claims herein. Further, if the user does access an update, but it is just a more current version of a course meant to overcome identified deficiency or provide basic education to a user, rather than being focused on current developments in a category, said activity is not within the scope of the Amended Claims herein. Nothing in Allison 230 or Darago et al. 014 would lead one skilled in the art to arrive at what is Claimed in the Amended Claims herein, or to seek out Lawcast, (which does not use the Internet), as neither mentions:

> periodically updating the content thereof a continuing multiplicity of times via said internet website, wherein the content of each update is primarily focused on developments since the preceeding update rather than on overcoming identified deficiency or establishing basic education;

Even in view of Lawcast, which does NOT describe use of the Internet and is not disclosed directly or impliedly in either Allison 230 or Darango et al. 014, the combination of limitations in the Amended Claims herein alone is not properly obvious under Graham v. John Deere Co. of Kansas City, 383 U.S. 1 (1966).

And with that thought in mind, what is argued above is still valid even in view of the recent KSR International Co. v. Teleflex Inc. et al. case, which did NOT even pretend to overrule existing law. Instead it simply concluded good and long established law had been improperly applied by the lower Court.

The facts of that case justified the findings therein, but said case must be interpreted in view of its facts which established that the Federal Circuit had applied a too strict an application of the "teaching, suggestion, motivation (TSM)" test. What the S. Ct. ruled in KSR was that in view of a Patent, (ie. Asano et al. 5,010,782), which was not before the Patent Examiner when allowing Claim 4 of a Patent to Engelgua 6,237,565, said Claim 4 was rendered obvious and therefore invalid. That the Asano et al. 782 Patent was relevant is easily determined by noting the title thereof, which is "Position Adjustable Pedal Assembly". The title of the Engelgua 565 Patent is "Adjustable Pedal Assembly with Electronic Throttle Control". A simple computer search for Patents concerning Adjustable Pedals would have identified Asano et al. 782. It is a mystery as to how it was overlooked by both the Applicant and the Patent Examiner. One skilled in the art would have easily been aware of Asano et al. 782, and I have to wonder if perhaps an inequitable conduct issue was really the focus of the KSR case.

The finding of the S. Ct. was reasonable in view of the fact scenario before it. One skilled in the relevant art should have been aware of Asano et al. 782 Patent as it concerned adjustable pedals, just as did the Engelgua 565 Patent. In view of the prosecution history of the Engelgua 565 case before the Patent Examiner, had said examiner had Asano et al. 782 before him he would have rejected the Issued Claim 4.

Again, the S. Ct. did NOT over rule the time tested prohibition on the use of Hindsight in Patent Examination. The S. Ct. even states in its opinion:

In Graham v. John Deere Co. of Kansas City, 383 U.S. 1 (1966), the Court set out a framework for applying the statutory

language of Section 103, language itself based on the logic of the earlier case Hotchkiss v. Greenwood, 11 How. 248 (1851), and its progeny. See U.S., at 15-17. The analysis is objective:

> "Under Section 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or non-obviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc. might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented." Id, at 17-18.
>
> While the sequence of these questions might be reordered in any particular case, the factors continue to define the inquiry that controls. If a court, or patent examiner, conducts this analysis and concludes the claimed subject matter was obvious, the claim is invalid under Section 103.

It is still the law that a Patent Examiner can not conduct an obviousness analysis by reading an Application, identifying elements of the invention therein and then using said hindsight simply seeking out a plurality of references that contain elements which are somehow like those in the invention on point, and then without some single reference, (other than the Application before him or her), providing teachings as how to identify said elements in the prior references, modify said elements selected therefrom and combine them as the Application directs to arrive at the invention being examined, while also providing teachings as to why other elements in said plurality of references should not be selected. If no single reference,

other than the Application before the Examiner provides said teaching, then the Examiner can not properly find obviousness. This remains the law. The question as to what one skilled in the relevant art would be aware, of course is relevant. And the KSR case teaches nothing more than if the invention concerns Adjustable Pedals, then one skilled in the art should be aware of Patents that have those exact words in their titles. That is all KSR teaches! The S. Ct. in KSR holds that "Rigid preventive rules that deny factfinders recourse to common sense, however, are neither necessary under our case law nor consistent with it." This is not an objectionable position in view of the facts of the KSR case. But that quickly becomes nonsense when applied in cases wherein one skilled in the relevant art would not reasonably be expected to be aware of references in fields removed from that in which an invention under examination is found.

The KSR case also leaves in place as good law, the principal from United States v. Adams, 383 U.S. 39, 40 (1966) which holds that when the prior art teaches away from combining certain known elements, discovery of a successful means of combining then is more likely to be nonobvious. ID, at 51-52. The S. Ct. in KSR states that, "As is clear from cases such as Adams, a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art".

In view of the foregoing, it is argued that nothing in Darago et al. 014 or Allison 230 suggests the sequence of steps recited in the Present Claims herein. Said references are focused on distribution of Courseware used to overcome identified deficiency or to establish basic education in an area, over the Internet and Darago et al. 014 is focused on apparatus. The

Lawcast materials do not focus on apparatus and do not suggest distribution via the Internet and thus would not be expected to be known to one skilled in the art of distributing therevia. Had the Applicant not disclosed said Lawcast materials in the Specification of the Present Application, the Examiner would not be reasonably expected to find them based on the teachings in Darago et al. 014 or Allison 130. And again, the Specification of a Patent Application can not be used as a Teaching Reference. Even if the Lawcast materials were proper, which they are not, they do not describe the sequence of steps in the Claims Pending herein, and especially Claim 19. And, as disclosed above, Lawcast has only relatively recently, (about a year ago), begun to consider distribution via the internet. The present Application priority however, predates that by many years. Previous disclosure by Lawcast taught away from use of the Internet.

RESPONSE TO SPECIFIC REJECTIONS

REGARDING CLIAMS 1-7, 9, 10, 15, 21 AND 25:

As regards Present Claims Step b, please note that Step b) is Amended to read:

b. said information provider making periodically updated audio format professional continuing education information available from audio information format machine readable storage via said web site[[,]] in topical categories, and at least impliedly agreeing to provide a service of periodically updating the content thereof a continuing multiplicity of times, wherein the content of each update is primarily focused on developments since the preceeding update, rather than on overcoming identified deficiency or establishing basic education;

In particular the Examiner identified disclosure in Darago 014 does not mention "Periodically Updated..."Professional Continuing Education", although it does specifically mention a lot of other sorts of presentation. The absence of the on-point "Periodically Updated..."Professional Continuing Education" in the context of the otherwise detailed Darago 014 Specification is strong indication that Darago does not disclose "Periodically Updated..."Professional Continuing Education", as is the topic in the Present Claims. One skilled in the art would not read Darago 014 and be led to think of "Periodically Updated"... "Professional Continuing Education".

<u>As regards Step e of the Present Claims, which recite:</u>

said method further comprising:

e. said information provider updating the audio format professional continuing education information in the at least one client identified topical category of interest in step d, and said at least one paying client in step d repeating step d after said audio format professional continuing education information is updated, and receiving the updated audio format professional continuing education information in said identified topical category of interest;

said method being further characterized in that the information in said client identified and received audio format professional continuing education is prepared to keep said client aware and informed of developments in the topical category and thereby maintain professional currency therein, to the exclusion of being prepared to train said client to overcome a specific documented professional competency deficiency <u>or to provide basic education</u>.

note that the Examiner makes an arm waving arguement which is not based on any disclosure in Darago 014, said arguement being that "It would have been obvious to one of ordinary skill in the art time the invention was made to keep courseware current in order to sustain business operations". It is argued that nothing in Darago 014 or Allison 230 would remotely lead one skilled in the art to even consider that point. Note also that the Examiner admits on Page 6 of the Action, in Line 11, "Although Darago does not teach professional currency,...".

Other than to point out that the Law Cast materials relied on by the Examiner teach away from application in an Internet setting and are therefore not relevant, Applicant does not specifically respond to the Examiner regarding the Dependent Claims as it is believed tha the Independent Claims are shown to be Allowable herein.

It is stressed that nothing in Darago 014 or Allison 230 remotely suggests accessing periodically updated audio format professional continuing education information available from audio information format machine readable storage via a web site in topical categories, and requires that access occure at least twice with an update occuring threbetween. While Law Cast suggests updating presentations, it teaches away form use of the Computers and hence the Internet as a distribution means. In contrast, Law Cast distributes Tapes and CD's via mail.

As regards Claims 17, 18, 19 and 20, which recite "Time/Topic Tags", please note that the Examiner states on Page 11, beginning in Line 5, of the Action:

"Darago, Allison and Lawcast teach all the above as noted

under the 103(a) and teach accessing course content and updating content, but do not disclose tagging content with an original date. One of ordinary skill at the time of the invention would ascertain tagging content with an original date as fundamental as tagging a journal article or paper or court case with an original date...".

It is argued that existence of the element of "tagging" in prior art settings does not lead one skilled in the art in the Present Scenario Claims to necessarily think of it, along with all the other Limitations in the Present Claims. This is especially true in that, again, Law Cast teaches away from use of Computers, hence, the Internet. Nothing in any cited reference remotely suggests, as is recited in Present Claim 19:

> f. said client, after step e, again accessing the audio format professional continuing education information originally provided in a practice of step d before the information is ~~being~~ updated and accessed in step e, by again practicing step d with the addition that the identifying date with which said updated audio format professional continuing education information was tagged is entered along with the identifying of a professional continuing education information topical category of interest;
>
> said method being further characterized in that the information in said client identified and received audio format professional continuing education is prepared to keep said client aware and informed of developments in the topical category and thereby maintain professional currency therein, to the exclusion of being prepared to train said client to overcome a specific documented professional competency deficiency or establishing basic education.

As regards Claim 23:

23. (currently amended): A method of providing audio format periodically updated professional continuing education to clients for payment, to keep clients aware and informed of developments in at least one topical category, comprising the steps of:

a. an information provider providing an internet web site;

b. said information provider making periodically updated audio format professional continuing education information available from audio information format machine readable storage via said web site[[,]] in topical categories, and at least impliedly agreeing to provide a service of periodically updating the content thereof a continuing multiplicity of times, wherein the content of each update is primarily focused on developments since the preceeding update, rather than on overcoming identified deficiency or establishing basic education;

c. making access to said audio format professional continuing education information available, via said web site to clients by a selection from the group consisting of:

periodic subscription; and

direct pay per access event;

d. said information provider allowing at least one client to receive said audio format professional continuing education information via said web site by, using an internet

accessing means, accessing said web site, and providing payment via a selection from the group consisting of:

proof of paid subscription; and

presenting payment means;

and identifying a professional continuing education information topical category of interest,

followed by said at least one paying client receiving audio format professional continuing education information in said topical category of interest at least twice, once before and once after information in said topical category is updated.

Regards the Dependent Claims 2-8, while Law Cast might suggest some of the specifics thereof, again Law Cast teaches away for use of Computers and, hence, the Internet.

It is again noted that the Examiner admits on Page 6 of the Action, in Line 11, "ALTHOUGH DARAGO DOES NOT TEACH PROFESSIONAL CURRENCY,...", and that Law Cast teaches away from use of Computers, hence the Internet "EVEN COMPUTERS - NO MATTER HOW GOOD THEY GET, YOU CAN'T USE THEM IN THE CAR", SAID MEYER, ..."YOU CAN'T USE THEM AS YOU WALK". Further, nothing in any cited reference require updating of materials "wherein the content of each update is primarily focused on developments since the preceeding update, rather than on overcoming identified deficiency or establishing basic education"; and nothing in any reference remotley suggests that an Internet Based Service should require "said information provider making periodically updated audio format professional continuing

education information available from audio information format machine readable storage via said web site in topical categories, and at least impliedly agreeing to provide a service of periodically updating the content thereof a continuing multiplicity of times,".

As a final comment, if the Examiner's approach to formulating rejection under Section 103 is allowed to prevail, based on such far removed prior art as Allison 230 and Darago et al. 014, (neither of which remotely suggest the sequence of steps in the present Claims), in view of Law Cast, (which teaches away from the use of computers, hence the Internet, to distribute periodically updated audio format continuing education), it is truely a sad commentary on what has been happaning to the Patent System and which, if allowed to continue to its end point, will render the PTO to the status of being but an irrelevant joke. As a Patent Attorney who knows first hand from over 20 years of succesful practice what is going on, I express serious concern over what is going on. The KSR case, agreed, identified a real problem in how Section 103 was applied in an unrelated case and indicated change is necessary, but the present situation is far different from the facts upon which the KSR Case was based and upon which the decision therein was based.

In Conclusion, the Examiner has demonstrated Hindsight in his approach to Examination. A READING OF DARAGO 014, ALLISON 240 AND LAW CAST WOULD NOT REMOTELY LEAD ONE SKILLED IN THE ART TO WRITE THE PRESENT CLAIMS! THAT VARIOUS ELEMENTS OF THE PRESENT CLAIMS ARE FOUND IN SAID PRIOR ART IS IRRELEVANT UNDER ESTABLISHED AND STILL GOOD LAW REGARDING APPLICATION OF SECTION 103. A READING OF DARAGO 014, ALLISON 240 AND LAW CAST WOULD LEAVE ONE SKILLED IN THE ART WITH A MIND SET BASED IN THE

EXAMINER'S ADMISSION "ALTHOUGH DARAGO DOES NOT TEACH PROFESSIONAL CURRENCY,...", AND THE LAW CAST MATERIALS STATEMENT WHICH TEACHES AWAY FROM USE OF COMPUTERS, HENCE THE INTERNET "EVEN COMPUTERS - NO MATTER HOW GOOD THEY GET, YOU CAN'T USE THEM IN THE CAR", SAID MEYER, ..."YOU CAN'T USE THEM AS YOU WALK".

It is believed, that in view of the Discussion and/or the attached Attestation, that Claims 1 - 27, as Amended, are now Allowable. Therefore the Examiner is respectfully requested to provide the Notice of Allowance and Issue Fee Due. Should problems remain, Applicant welcomes suggestion from the Examiner.

Sincerely,

JAMES D. WELCH

JW/hs